



March 27, 2001

Ms. Mary E. Reveles
Assistant County Attorney
Fort Bend County
301 Jackson, Suite 621
Richmond, Texas 77469-3108

OR2001-1209

Dear Ms. Reveles:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 145334.

The Fort Bend County Sheriff's Office (the "sheriff") received a request for "a full offense report" relating to a specified case number. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you raise and have reviewed the information you submitted. We also have reviewed the comments that the requestor submitted to this office. *See* Gov't Code § 552.304 (permitting member of public to submit written comments stating reasons why requested information should or should not be released).

As section 552.108 of the Government Code is the more inclusive exception you raise, we address it first. Section 552.108, the "law enforcement exception," excepts from required public disclosure "[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution . . . if . . . the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication[.]" Gov't Code § 552.108(b)(2). Generally, a governmental body that raises section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986). Section 552.108(b)(2) applies to information pertaining to a concluded case that did not result in a conviction or a deferred adjudication.

You inform this office that the requested offense report concerns a case that already had been dismissed when the sheriff received the request for the report. You provided a copy of a letter from the sheriff to your office, dated January 11, 2001, describing the dismissal of the

criminal charges and referring to the case as being in "a closed status." Based on your representation, the sheriff's letter, and our review of the requested information, we find that the offense report concerns a case that had concluded in a result other than a conviction or a deferred adjudication as of the date of the sheriff's receipt of the request for information. We therefore conclude that the requested report is excepted from disclosure under section 552.108(b)(2). *See also* Open Records Decision No. 530 at 5 (1989) (requestor's right of access to information at issue must be interpreted as of time that written request for information was made).

Section 552.108 does not except from disclosure "basic information about an arrested person, an arrest, or a crime." Gov't Code § 552.108(c). Ordinarily, section 552.108(c) requires the disclosure of the identity of a crime victim or complainant. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177, 186-87 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 at 3-4 (1976). But in this instance, the sheriff seeks to withhold the alleged crime victim's identity and affidavit. He contends that the disclosure of this information "will subject the victim to threats or intimidation." You argue that, under these circumstances, the victim's identity and affidavit are protected from disclosure under section 552.101 of the Government Code in conjunction with common law privacy.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," including information that is encompassed by the common law right to privacy. Information may be withheld under section 552.101 in conjunction with common law privacy only if (1) the information contains highly intimate or embarrassing facts, the release of which would be highly objectionable to a reasonable person, *and* (2) the information is not of legitimate concern to the public. *See Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977).

As a general rule, common law privacy does not protect the identity of a crime victim. *See* Open Records Decision No. 438 at 7 (1986) (stating that identity of a complainant, which generally is public information, may be withheld only in unique circumstances). Such information may be withheld under section 552.101 in conjunction with common law privacy only upon a showing of certain "special circumstances." *See* Open Records Decision No. 169 (1977). This office considers such "special circumstances" to refer to a very narrow set of situations in which release of the information at issue would likely cause someone to face "an imminent threat of physical danger." *Id.* at 6. "Special circumstances" do not include "a generalized and speculative fear of harassment or retribution." *Id.*

We have considered the sheriff's position. But we are not persuaded that he has established the presence of special circumstances sufficient to justify the withholding of the alleged crime victim's identity under section 552.101 and common law privacy. Therefore, the sheriff must disclose the victim's identity in releasing basic information under

section 552.108(c). We note, however, that section 552.108(c) does not require the release of a statement obtained from a crime victim or a witness. *See* ORD 127 at 4. Thus, the sheriff may withhold the victim's affidavit, along with the rest of the requested offense report, under section 552.108(b)(2).

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

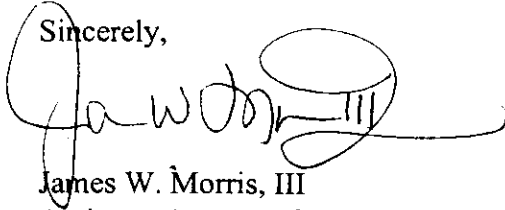
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "James W. Morris, III". The signature is fluid and cursive, with a large initial "J" and a long, sweeping underline.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/er

Ref: ID# 145334

Encl: Submitted documents

cc: Mr. John W. Walker
3505 Miller Road
Rosharon, Texas 77583
(w/o enclosures)